
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2016/109
Order No.: 249 (GVA/2016)
Date: 30 December 2016
Original: English

Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

HASSOUNA

5. The Applicant requested management evaluation of the decision at issue on 22 December 2016.

6. This application was initially filed with the Nairobi Registry of the Tribunal on 23 December 2016. It was transferred to its Geneva Registry on 27 December 2016 and served on the Respondent for reply on the same day.

7. The Respondent filed his reply to the application on 28 December 2016.

Parties' contentions

8. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. When it was decided to fill the regular budget post of BOI Officer through an RFR exercise, the previous Chief of Staff, MINUSCA, promised the Applicant that he would be reassigned to another post within the Mission. As the Mission's Chief of Staff and the Applicant's supervisor, he had the authority to proffer such commitment. The contested decision amounts to dishonouring this promise, although there are available P-4 posts to which the Applicant could be reassigned;

b. The very fact that it was decided to fill the post in question from the roster, instead of issuing a Vacancy Announcement allowing the Applicant to compete for the functions he is encumbering, suggests a mindset to exclude him from consideration, all the more since the Applicant's performance was satisfactory and there was thus no urgency to fill the post. In this light, the possibility that the contested decision was tainted with discrimination and extraneous factors cannot be excluded;

b. The Applicant has not provided any evidence of a written promise or firm commitment to renew his appointment beyond 31 December 2016. Although he requested management to consider reassigning him to a Political Affairs Officer position, he received no such commitment;

Urgency

a. Urgency was self-inflicted by the Applicant. The Chief of Staff, MINUSCA, notified the Applicant of the non-renewal of his contract on 2 November 2016. Subsequently, the Administration sent him a number of clear communications on his separation. He could have initiated management evaluation well in advance, but chose to wait until a few days before the expiry of his appointment.

Consideration

10. Pursuant to art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure, the Tribunal may suspend the implementation of an administrative decision during the pendency of management evaluation where the decision appears prima facie to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage to the concerned staff member. These are cumulative conditions. Therefore, the impugned decision can be suspended only if all three requirements are met (e.g., Hepworth UNDT/2009/003).

Scope of application for suspension of action

11. The administrative decision that this application seeks to stay is the Applicant's separation on the expiry date of his current fixed-term appointment. In his submission, his separation ultimately results from an implicit disregard of a promise to reassign him, which is the main ground for illegality he relies upon. For clarity, while the Applicant also takes issue with the choice of resorting to an RFR to fill the BOI Officer post, this is not a contested decision in these proceedings. It is clear enough that he raises this matter solely in arguing that there was an intent to leave him out of consideration for this position. In any

could be “requested”, stressing however that such reassignment needed to be approved by the Field Personnel Division at Headquarters.

17. In the absence of more compelling evidence, the Tribunal is unable to find that the Administration was bound by a promise to reassign the Applicant.

18. As to the contentions suggesting extraneous factors or discrimination, suffice it to say that the burden of proving improper motivation rests with the Applicant (Frechon 2011-UNAT-132, Ahmed 2011-UNAT-153). The Applicant adduces no tangible evidence thereof, and the mere claim that the choice of an RFR to fill the BOI Officer post indicates a certain mindset falls short to meeting this burden.

19. Based on the evidence before it, the Tribunal cannot but to find that it is not established that the Applicant’s separation would be prima facie unlawful.

Urgency

20. This Tribunal has ruled in several instances that the requirement of particular urgency will not be satisfied if the urgency was c theanbbptbkmx0F /m/00kx3FsnFunahhc/mx

her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the Applicant (Villamorán UNDT/2011/126, Dougherty UNDT/2011/133, Jitsamruay UNDT/2011/206).

22. The Applicant manifests in his application that he was informed of his upcoming separation on 2 November 2016. He was later invited, by email of 28 November 2016, to sign the memorandum relating to the non-extension of his contract. He was sent a formal memorandum, dated 30 November 2016, detailing the administrative arrangements related to his “Separation from MINUSCA upon completion of Fixed Term Appointment on 31 December 2016”. He further concedes that on 13 December 2016, he was urged to complete the administrative formalities linked to his separation.

23. Yet, although he was aware of his separation almost two months in advance of his contract’s expiry date, and despite several reminders, he did not make his request for management evaluation until 22 December 2016, and did not file his application before the Tribunal until the next day, that is, over seven weeks after he was first informed of the decision, and merely five working days before its implementation date. Had he requested management evaluation shortly after he came to know about the intended separation, that is, on 2 November 2016, the Management Evaluation Unit, which must reply within 45 days of the submission of any such request, could have rendered its evaluation while the Applicant’s contract was still in effect.

24. The Applicant provides no explanation for not taking action earlier. He barely mentions that he made “effort[s] to persuade the management to reconsider their decision”, with no particulars whatsoever. Even if this were to be interpreted as the Applicant having seriously tried to reach an amicable settlement, the Tribunal recalls that informal attempts at settlement and mediation, if any, do not exonerate an applicant from acting in a timely manner (Dougherty UNDT/2011/133, Woinowsky-Krieger No. 59 (GVA/2010). See also Sahel UNDT/2011/023, Patterson UNDT/2011/091).

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